

BERNFELD, DEMATTEO & BERNFELD LLP  
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*Attorneys for Michael Schur*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**  
SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)  
SIPA LIQUIDATION

**OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM**

Michael Schur, by his attorneys, hereby objects to the Notice of Trustee's  
Determination of Claim dated May 22, 2009 (the "Determination Letter"), as follows:

1. As the Trustee's Determination Letter acknowledges, Michael Schur ("Claimant")  
is a "customer" of Bernard L. Madoff Investment Securities, LLC ("BLMIS") as that term as  
defined under the Securities Investor Protection Act (hereinafter "SIPA").

2. According to the final customer statement for his account at BLMIS dated  
November 30, 2008 (the "November Statement"), Claimant had securities in his BLMIS account  
valued at \$2,653,363.78 as well as cash of \$316,470.

FILED  
U.S. BANKRUPTCY COURT  
2009 JUN 22 P 5:00  
S.D. OF N.Y.

3. On or about December 15, 2008, the court directed the liquidation of BLMIS pursuant to the provisions of the Securities Investor Protection Act of 1970 ("SIPA") and Irving Picard was designated by SIPC and appointed by the Court to act as the trustee (the "Trustee").

4. Pursuant to order dated December 23, 2008, the Court empowered the Trustee:

- a. to disseminate and make available notice and claim forms to BLMIS customers for the filing of Customer Claims in the BLMIS Liquidation;
- b. to advise Customers of the relevant claim-filing cut off dates;
- c. to determine in writing all filed customer claims, and to the extent that the Trustee disallowed any claim, whether in whole or in part, to provide the reason for such disallowance.

5. Claimant submitted his claim on the form therefor promulgated by the Trustee (the "Claim"). Included in the Claim was a copy of the November Statement as an attachment (see Exhibit A).

6. By letter dated May 22, 2009, received by Claimant on or about May 22, 2009, the Trustee sent Claimant the Trustee's Determination Letter which, *inter alia*: (a) disallowed the claim for physical delivery of the securities set forth as being in Claimant's BLMIS account as of the November Statement; (b) allowed the Net Equity claim but only to the extent of \$1,210,000, rather than for the value of the November Statement as the Michael Schur Customer Claim requested. A copy of the Trustee's Determination Letter is annexed as Exhibit B.

7. As is reflected in the Trustee's Determination Letter, no reason is provided for the:

- a. denial of Claimant's claim for the physical delivery of securities listed in the November Statement.<sup>1</sup>;
- b. Approval of the Net Equity claim but limited only to the amount of \$1,210,000 rather than the account value as reflected in the November Statement.<sup>2</sup>

8. Claimant objects to the Determination Letter to the extent that it: (a) denies Claimant's request for delivery of the securities listed in the November Statement; (b) limits Claimant's allowed claim to the sum of \$1,210,000; and (c) may or purports to condition payment of the SIPC advance on the undisputed amount of the Net Equity Claim on a release by Claimant of the right to file objections to the disputed portions of the claim or to have those objections heard and determined by the Court.<sup>3</sup>

### **SUMMARY OF OBJECTIONS**

9. Claimant's Objections are predicated on the law-on the SIPA statute and regulations and on case law interpreting the rights of customers of broker-dealers in a SIPA Liquidation.

10. One of core the legal issues raised is the Trustee's use of an improper definition

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<sup>1</sup> The letter states that "No securities were ever purchased for your account" which is simply a statement of fact, not a legal reason or basis for the denial, as required by the Order dated December 23, 2008

<sup>2</sup> The letter states that this allowed amount represents "the amount of money you deposited with BLMIS on [sic] for the purchase of securities less subsequent withdrawals you received" which is again a statement of fact, not a legal reason or basis, as required by the Order dated December 23, 2008.

<sup>3</sup> Claimant does not concede or agree that the release in fact prohibits the Claimant from filing Objections or from having them heard or determined by the Court.

and methodology for calculating a customer's Net Equity:

- a. The SIPA Statute and the applicable case law require that when, as here, a customer's account purports to reflect positions in actual securities (as defined by SIPA), the Customer's Net Equity is calculated by the value s set forth in the last account statement consistent with the customer's reasonable expectations.<sup>4</sup>
- b. The Trustee has adopted a definition and methodology of Net Equity which is limited to the amounts invested by a customer less amounts withdrawn by the customer without regard to any other factor, disregarding all written confirmations of securities transactions and all account statements received by the customer. As a result, the Trustee's definition and methodology is inconsistent with and frustrates the customer's reasonable expectations - in flat violation of the stated purposes of the SIPA statute.

11. The Trustee's insistent use of this flawed and improper definition of Net Equity materially and adversely affects a number of basic issues for Customers and their SIPC claim, including the following:

- a. In many cases, a customer who should have a positive Net Equity based on the proper definition - and therefore one entitled to a SIPC payment - is determined by the Trustee to have a negative Net Equity and, therefore,

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<sup>4</sup> See definition of Net Equity in SIPA statute 15 USC §78lll(11); See also *In re New Times Secs. Servs.*, 371 F.3d 68 (2d Cir. 2004)

someone not entitled to any SIPC payment.

- b. In other cases, a customer receives a lower SIPC payment than the customer should have received because the Trustee's formula, while still leaving the customer with some Net Equity, nevertheless reduces the Net equity amount below what it should have been based on the proper definition of and methodology for determining Net Equity.
- c. In most cases, the improper reduction of a customer's Net Equity will adversely affect the amount that a customer receives of future distributions by the trustee of the non-SIPC customer property to be distributed among customers in accordance with the SIPA statute.

12. A separate core issue is whether the Trustee is complying with the mandates of SIPA which imposes fiduciary duties on the Trustee in favor of the customers when the Trustee adopts arguments and positions antithetical to the customers who he owes said fiduciary duty and which support SIPC and reduce the amount of SIPC payments at the expense of the customers. For example, the definition of Net Equity chosen by the Trustee has resulted in fewer and lower SIPC payments to many customers and substantial savings to SIPC.

### **SPECIFIC OBJECTIONS**

#### **First Objection**

13. The Order of December 23, 2008 requires the Trustee to provide "the reasons" for any claim disallowance in whole or in part. As noted in ¶ 7 above, the Trustee has not provided such reasons in connection with the Trustee's denial of portions of Claimant's claim.

- a. With respect to the Trustee's denial of delivery of Securities, the only

explanation provided is the statement in the Determination Letter that “No securities were ever purchased for your account” (“DL Statement A”).

However, the SIPA statute specifically provides for physical delivery if the securities in question are missing. The Determination Letter makes no mention of this SIPA provision nor does it set forth any reason why the Trustee has not complied with it.

- b. With respect to the Net Equity allowance of only \$1,210,000 of the total claim, the Trustee has failed to provide a reason why the values set forth on the November Statement are not accepted as Claimant’s Net Equity. The statement that the Trustee has fixed the amount of the Allowed Claim based on monies deposited less monies withdrawn (“DL Statement B”) is simply a statement of methodology not a “reason” in law for rejecting the November Statement values.

### Second Objection

14. If DL Statements A and B were intended by the Trustee to set forth “reasons” for the respective disallowances, neither provides a “reason” sufficient in law or within the meaning of the Court’s December 23 Order.

15. With respect to the denial of the claim’s request for securities:

- a. SIPC has previously acknowledged that if a claimant files the claim within sixty days of the filing date (here by March 4, 2009 - the “Initial Claim Period”), that claimant will receive the securities positions reflected in the claimant’s last customer account statement even if “the securities

were never purchased”;

- b. Accordingly, to the extent that DL Statement A was intended to provide a “reason” for denying the securities claim, it is contrary to law and stated SIPC policy and methodology, and as such, is no “reason” as a matter of law; and
- c. Since Claimant did file his claim within the Initial Claim Period, his securities claim should not have been denied and he should therefore have received , *in kind*, the securities reflected in his November Statement.

16. With respect to the disallowance of Claimant’s Net Equity claim for all amounts in excess of \$1,210,000:

- a. The definition of Net Equity and the methodology used by the Trustee to calculate the same is invalid and contrary to law.
- b. Both the SIPA definition of Net Equity and the case law interpreting the definition confirm that when the transactions in the account purport to involve real securities, Net Equity is to be determined by the customer-claimant’s last account statement, even if the transactions in those securities did not in fact occur
- c. There is no lawful authority for the Trustee’s stated methodology of calculating Net Equity solely on the basis of “the amount of money...deposited...less subsequent withdrawals ...received.”
- d. Accordingly, the allowed Net Equity for the Michael Schur Customer Claim should have been \$2,969,833.78 with the only proper reduction

therefrom being any SIPC payment made on account of that claim.

Third Objection

17. If the Court were *arguendo* to adopt the Trustee's flawed "cash in/cash out" methodology of fixing Net Equity (which it should not), even then the law requires an appropriate positive adjustment to reflect the greater of either the reported appreciation in the account reflected by the account statements and the P&S confirmations sent to the customers by BLMIS when the securities purchases and sales allegedly occurred or interest at the judgment rate.

18. The appreciation in claimants account as cumulatively reflected in the November Statement arose almost entirely from securities transactions as defined under SIPA which were reflected in written confirmations from BLMIS sent contemporaneously and monthly statements recording those transactions in claimant's BLMIS customer account.

19. Upon information and belief, the Trustee has acknowledged, and it is the fact, that BLMIS' books and records reflect the cumulative appreciation in claimant's BLMIS account as reflected in the November Statement (and the P&S confirms and prior monthly account statements previously furnished to Claimant by BLMIS).

20. In accordance with applicable state and federal law and principles of equity and fairness, if the Court determines Claimant's Net Equity without including the cumulative appreciation in the account as reflected in the November Statement, then Claimant's Net Equity must include interest at the legal rate applicable to judgments calculated on all sums deposited.<sup>5</sup>

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<sup>5</sup> The interest calculation would be adjusted for customer withdrawals in the sense that interest would cease to be calculated on any amounts withdrawn from and after the date of such withdrawal.



#### Fourth Potential Objection

21. In accordance with the directions accompanying the Trustee's Determination Letter, Claimant executed and returned the partial Release and Subrogation form required by the Trustee as an express pre-condition to receiving the SIPC payment the Trustee acknowledged was due to Claimant based on the undisputed portion of the Claim.

22. The partial release and subrogation form was provided based upon the express understanding that if the Court determined that the Trustee's had used an improper methodology to calculate Net equity (e.g. that the Trustee's "cash in/cash out" methodology was erroneous, in whole or in part) and that using the methodology allowed or adopted by the Court would result in an increased Net Equity for Claimant, then Claimant's Net Equity would be increased to that amount unaffected by the partial release and subrogation provided by Claimant.

23. At this juncture, the Trustee has not specifically advised Claimant that he will, in fact, take a contrary position with respect to Claimant and the calculation of Claimant's Net Equity. However, in court filings by other claimants, there are allegations that the Trustee has threatened to do precisely that with respect to Objections filed by those Claimants.

24. Accordingly, Claimant is filing this Fourth Objection as a potential objection as a protective matter to provide the Trustee and this Court with timely notice, in the event that the Trustee subsequently seeks to claim that the partial release and subrogation form resulted in a waiver of Claimant's rights to object to the disputed portion of the Determination Letter.

#### Fifth Objection

25. A primary purpose of the SIPA statute is to protect customers and satisfy their reasonable expectations, as reflected in the Customer's account statements and the confirmation

of trades received by the customer from the broker-dealer.

26. Under SIPA, the person designated and appointed by the Court to act as Trustee in a SIPA liquidation owes the customers of the debtor firm a fiduciary duty to act in their best interest and to advocate for them consistent with the law. The Trustee owes no such comparable duty to SIPC.

27. The Determination Letter sent by the Trustee to Claimant appears facially to be inconsistent with the duties owed to customers of BLMIS, including Claimant.

28. For example, the definition of Net Equity adopted by the Trustee appears inconsistent with the fiduciary duty owed to customers, including Claimant.

- a. For purposes of determining eligibility for SIPC advances, the Trustee has adopted a definition and methodology calculation which has the effect of minimizing the number of customers who qualify for any SIPC advance and which also minimizes the amount thereof. The only apparent beneficiary of this is SIPC itself which, as a result, is required to make SIPC payments at greatly reduced levels with no concomitant benefit to any other customer or the customer class generally;
- b. The Trustee's Net Equity definition also results in a reduced Net Equity for all customers of BLMIS whether or not the customer did or did not make any withdrawals (and whether said withdrawals were substantial or modest);
- c. SIPA specifically provides that the customers of a broker-dealer being liquidated under SIPA are entitled to preference over general creditors of

the debtor. In that regard, under SIPA the Net Equity of all customers of the Broker Dealer being liquidated by SIPC is paid in full before any payments are made to general non-customer creditors. Under the Trustee's definition, the collective Net Equity of the entire customer class of BLMIS customers is materially reduced, thereby benefitting the general creditor class at the expense of the Customer class.

29. At a minimum, as a fiduciary for claimant (and others similarly situated) the Trustee is required to take positions that favor those to whom he owes a fiduciary duty - which in this circumstance means arguing for a definition of Net Equity that benefits the Customer class, not one that favors SIPC at the expense of the customers.

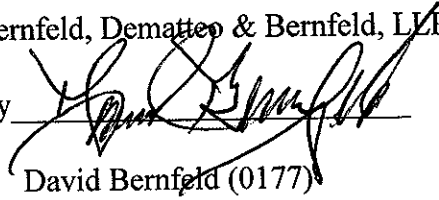
30. Given the Trustee's fiduciary obligations, if there is a conflict or dispute between the Customers and SIPC, the Trustee is duty bound to make any sustainable or justifiable argument that supports the customer's contentions. However, with respect to the dispute between customers and SIPC concerning the definition of Net Equity, the Trustee has adopted a definition that supports SIPC at the expense of the customer.

31. Under the circumstances, Claimant: (a) objects to the Trustee adopting and implementing a definition of Net Equity which favors a third party at the expense of the Trustee's lawful fiduciaries; and (b) seeks a direction from the Court to the Trustee to discharge his duties under SIPA consistent with the fiduciary duties imposed on him by SIPA and by other applicable law.

Dated: June 20, 2009

Bernfeld, Dematteo & Bernfeld, LLP

By

A handwritten signature in black ink, appearing to read "David Bernfeld", is written over a horizontal line.

David Bernfeld (0177)

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DATE	BOUGHT RECEIVED ON LONG	SOLD DELIVERED ON SHORT	TIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/03/03	2,394		510	BALANCE FORWARD	29,890	11,436.20	
11/03/03	1,710		1012	WELLS FARGO & CO NEW	34,900	59,747.00	
11/03/03	1,482		4836	HEWLETT PACKARD CO	55,830	82,799.05	
11/03/03	969		5338	WAL-MART STORES INC	87,270	84,602.63	
11/03/03	3,591		9162	INTERNATIONAL BUSINESS MACHS	72,880	261,855.08	
11/03/03	3,933		9664	EXXON MOBIL CORP	14,510	57,224.83	
11/03/03	1,881		13990	INTEL CORP	59,580	112,144.98	
11/03/03	2,565		18315	JOHNSON & JOHNSON	38,530	98,931.45	
11/03/03	1,368		22641	J.P. MORGAN CHASE & CO	44,680	61,168.88	
11/03/03	798		26967	COCA COLA CO	55,970	44,216.26	
11/03/03	1,482		31293	MEDONALDS CORP	28,550	42,370.10	
11/03/03	5,415		35619	MERCK & CO	21,810	118,317.15	
11/03/03	2,736		39945	MICROSOFT CORP	17,390	47,441.80	
11/03/03	1,083		52923	ORACLE CORPORATION	56,410	61,135.03	
11/03/03	627		53425	PEPSICO INC	100,780	63,214.06	
11/03/03	4,617		57249	APPLE INC	16,940	78,395.98	
11/03/03	1,083		57751	PFIZER INC	54,610	59,185.63	
11/03/03	2,052		61575	ABBOTT LABORATORIES	64,080	131,574.16	
11/03/03	741		62077	PROCTER & GAMBLE CO	59,160	43,866.56	
11/03/03	1,425		65901	AMGEN INC	43,600	62,187.00	
11/03/03	3,420		66403	PHILIP MORRIS INTERNATIONAL	21,590	73,973.80	
11/03/03	1,140		70227	BANK OF AMERICA	33,770	38,542.80	
11/03/03	3,705		70729	QUALEGMM INC	12,510	46,497.55	
				CITI GROUP INC			
				CONTINUED ON PAGE 2			

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11/02/08	855		74553	SCHLUMBERGER LTD	49.480	42,339.40	
11/02/08	2,052		75055	CONCAST CORP	16.510	33,960.52	
11/02/08				CL A			
11/02/08	4,047		78879	AT&T INC	27	109,430.06	
11/02/08	1,026		79361	CONOCOPHILIPS	52.510	53,916.26	
11/02/08	684		83205	UNITED PARCEL SVC INC	52.040	35,622.35	
11/02/08				CLASS B			
11/02/08			83707	CISCO SYSTEMS INC	16.730	69,779.53	
11/02/08	4,161		87531	U S BANCORP	29.530	35,394.41	
11/02/08	1,197		88033	CHEVRON CORP	73.430	104,694.75	
11/02/08	1,425		91857	UNITED TECHNOLOGIES CORP	53.160	36,388.44	
11/02/08	684		92359	GENERAL ELECTRIC CO	19.630	142,390.57	
11/02/08	7,239		96183	VERIZON COMMUNICATIONS	30.410	59,011.58	
11/02/08	1,938		96685	GOOGLE	337.400	57,701.40	
11/02/08	171		23119	U S TREASURY BILL DUE 2/12/2009	99.936		2,523,394.00
11/02/08		2,525,000					
11/02/08				FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/12/08	DIV		93.40
11/02/08		79,423	18220	FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/12/08	1		79,423.00
11/02/08	9,949		27588	FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/19/08	DIV	9,949.00	1.22
11/19/08				CONTINUED ON PAGE 3			



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11/19/09		9,949	53080	FIDELITY SPARTAN	1		9,949.00
11/19/09	175,000		57603	U S TREASURY MONEY MARKET	99.926	174,870.50	
11/19/09	5,852		62118	U S TREASURY BILL DOE 03/26/2009 3/26/2009 FIDELITY SPARTAN U S TREASURY MONEY MARKET NEW BALANCE	1	5,852.00	
	4,047 1,083 741 627 3,420 1,425 4,161 3,705 1,368 2,052 1,026 3,591 7,239			SECURITY POSITIONS ABT INC ABBOTT LABORATORIES AMGEN INC APPLE INC BANK OF AMERICA CHEVRON CORP CISCO SYSTEMS INC CITI GROUP INC COCA COLA CO COMCAST CORP CL A CONOCOPHILIPS EXXON MOBILE CORP GENERAL ELECTRIC CO CONTINUED ON PAGE 4	MKT PRICE 28.560 52.390 55.540 92.670 16.250 79.010 16.540 8.290 46.870 17.340 52.520 80.150 17.170	316,449.53	

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1,710			HEWLETT PACKARD CO	35.280		
3,933			INTEL CORP	13.800		
969			INTERNATIONAL BUSINESS MACHS	81.600		
2,565			J.P. MORGAN CHASE & CO	31.660		
1,881			JOHNSON & JOHNSON	58.580		
198			MCDONALDS CORP	58.150		
1,482			MERCK & CO	26.720		
5,415			MICROSOFT CORP	20.220		
2,735			ORACLE CORPORATION	16.090		
1,083			PEPSICO INC	56.700		
4,617			PETTER INC	16.430		
1,425			PHILLIP MORRIS INTERNATIONAL	42.150		
2,052			PROCTER & GAMBLE CO	64.350		
1,140			QUALCOMM INC	33.570		
855			SCHLUMBERGER LTD	50.740		
5,852			FIDELITY SPARTAN	1		
1,197			U S TREASURY MONEY MARKET			
684			U S BANCORP	26.980		
			UNITED PARCEL SVC INC	57.600		
			CLASS B			
			U S TREASURY BILL	99.971		
			DOE 03/26/2009			
			3/26/2009			
175,000			UNITED TECHNOLOGIES CORP	48.530		
684			CONTINUED ON PAGE 5			

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1,938 1,482 2,394			VERIZON COMMUNICATIONS WAL-MART STORES INC WELLS FARGO E CD NEW MARKET VALUE OF SECURITIES LONG 2,692,123.78	32.650 55.880 28.890		

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				YEAR-TO-DATE SUMMARY DIVIDENDS GROSS PROCEEDS FROM SALES			17,879.43 14,842,235.96

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Affiliated with  
Madoff Securities International Limited  
12 Berkeley Street  
Mayfair, London W1J 8DT  
Tel 020 7493 6222

DATE BOUGHT RECEIVED/DELIVERED	QUANTITY DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
1/01	57	44271	BALANCE FORWARD	15.800		157,212.00
1/01	57	48597	S E P 100 INDEX NOVEMBER 460 CALL	17.800	101,517.00	90,003.00
1/01	57	34701	NOVEMBER 450 PUT S E P 100 INDEX	26		148,143.00
1/01	57	39026	DECEMBER 430 CALL S E P 100 INDEX	30	171,057.00	
1/01	57	43351	DECEMBER 420 PUT S E P 100 INDEX	3	17,157.00	
1/01	57	47676	NOVEMBER 450 CALL S E P 100 INDEX	37		210,863.00
			NEW BALANCE			316,470.00
	57		SECURITY POSITIONS S E P 100 INDEX DECEMBER 430 CALL S E P 100 INDEX DECEMBER 420 PUT	MKT PRICE 23.300 16.500		
			MARKET VALUE OF SECURITIES LONG 94,050.00 SHORT 132,810.00			

Exhibit B

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

In Liquidation

**DECEMBER 11, 2008<sup>1</sup>**

**NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM**

May 22, 2009

Michael Schur  
10560 South Tropical Trail  
Merritt Island, FL 32952

Dear Mr. Schur:

**PLEASE READ THIS NOTICE CAREFULLY.**

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1S0473 designated as Claim Number 2487:

Your claim for securities is **DENIED**. No securities were ever purchased for your account.

Your claim is **ALLOWED** for \$1,210,000.00, which is the amount of money you deposited with BLMIS on for the purchase of securities less subsequent withdrawals you received, as outlined in Table 1.

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<sup>1</sup> Section 78III(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78III(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

- TABLE 1 -	
DEPOSITS	
DATE	AMOUNT
2/10/2003	\$2,000,000.00
Total deposits:	\$2,000,000.00
WITHDRAWALS	
DATE	AMOUNT
3/30/2004	\$100,000.00
1/26/2005	\$340,000.00
3/2/2006	\$100,000.00
1/19/2007	\$150,000.00
12/31/2007	\$100,000.00
Total withdrawals:	\$790,000.00
Total deposits less withdrawals:	\$1,210,000.00

**Your ALLOWED CLAIM of \$1,210,000.00 will be satisfied in the following manner:**

The enclosed **PARTIAL ASSIGNMENT AND RELEASE** must be executed, notarized and returned in the envelope provided herewith. Upon receipt of the executed and notarized **PARTIAL ASSIGNMENT AND RELEASE**, the Trustee will make a partial satisfaction of your **ALLOWED CLAIM** by sending you a check in the amount of \$500,000.00, with the funds being advanced by Securities Investor Protection Corporation pursuant to section 78fff-3(a)(1) of SIPA. The remainder of your claim - \$710,000.00 - will remain as a claim against the fund of customer property.

It is the Trustee's intent, pursuant to SIPA, to submit a Motion for an order of the Bankruptcy Court to allocate assets he has collected and will collect between the fund of customer property and the general estate and to distribute customer property *pro rata* among allowed claimants, such as you. In a decision in this case, Rosenman Family, LLC v. Picard, 401 B.R. 629, 634 (Bankr. S.D.N.Y. 2009), the Bankruptcy Court stated:

The customer estate is a fund consisting of customer property and is limited exclusively to satisfying customer claims. In re Adler Coleman Clearing Corp. (Adler Coleman II), 216 B.R. 719, 722 (Bankr. S.D.N.Y. 1998) (“A SIPA trustee, distributes ‘customer property’ exclusively among the debtor’s customers...”); see also 15 U.S.C. § 78111(4). Accordingly, Customers, as defined by SIPA § 78111(2), enjoy a preferred status and are afforded special protections under SIPA. See New Times Securities, 463 F.3d at 127; Adler Coleman, 195 B.R. at 269.”

*Id.* at 634.

It is not known at this time when the Trustee will be filing such allocation and

distribution motion.

**PLEASE TAKE NOTICE:** If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court **and** the Trustee within **THIRTY DAYS** after May 22, 2009, the date on which the Trustee mailed this notice.

**PLEASE TAKE FURTHER NOTICE:** If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

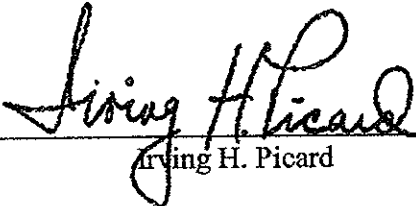
**PLEASE TAKE FURTHER NOTICE:** If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

**PLEASE TAKE FURTHER NOTICE:** You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for  
the Southern District of New York  
One Bowling Green  
New York, New York 10004

and

Irving H. Picard, Trustee  
c/o Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10011

  
Irving H. Picard

Trustee for the Liquidation of the Business of  
Bernard L. Madoff Investment Securities LLC